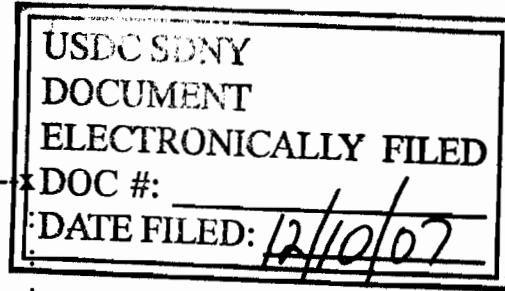


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MENTAL HYGIENE LEGAL SERVICE
and SHAWN SHORT,

Plaintiffs,

-v.-

ELIOT SPITZER, ANDREW CUOMO,
MICHAEL HOGAN, DIANA JONES RITTER,
and BRIAN FISCHER,

Defendants.

07-Civ-2935 (GEL)

**PRELIMINARY INJUNCTION
AND ORDER**

Plaintiffs having moved for preliminary injunctive relief and argument on the motion having been held on September 14, 2007, and consistent with the Opinion and Order issued in this matter on November 16, 2007, Plaintiffs' motion is granted in part, and

IT IS ORDERED that, pursuant to Fed. R. Civ. P. 65, Defendants and their agents, employees, and attorneys are hereby enjoined from detaining any Article 10 respondent pending trial, pursuant to N.Y. Mental Hygiene Law § 10.06(k), unless the court that directed his confinement has made or subsequently makes a specific, individualized judicial finding of probable cause to believe that the person is sufficiently dangerous to require confinement, and that lesser conditions of supervision will not suffice to protect the public during the pendency of the proceedings; provided, however, that any Article 10 respondent who is currently confined under the authority of MHL § 10.06(k) on the effective date of this order without the requisite findings specified above will remain so confined unless and until he makes a request for release, to the court that directed his confinement, on the grounds that there is not probable cause to

believe that he is sufficiently dangerous to require confinement or that lesser conditions of supervision will suffice to protect the public during the pendency of the proceedings. In the event of such application, the State shall respond within 72 hours, and Defendants may continue to retain the respondent until the court in which the application is pending either makes the requisite findings or otherwise resolves the application.


IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 65, Defendants and their agents, employees, and attorneys are hereby enjoined from committing, pursuant to Article 10 of the New York Mental Hygiene Law, any person charged with a sex offense and determined to be incapacitated with respect to that offense pursuant to article seven hundred thirty of the Criminal Procedure Law, unless there has been a jury finding, or a finding by the court if a jury trial is waived, that, beyond a reasonable doubt, the person did engage in the conduct constituting the underlying offense.

This injunction shall continue until a final hearing and determination of the merits of this action or until further order of this Court.

IT IS FURTHER ORDERED that Defendants' motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) is GRANTED as to Plaintiffs' challenge to MHL § 10.06(j)(iii) and is DENIED in all other respects.

SO ORDERED.

Dated: New York, New York
December 7, 2007


GERARD E. LYNCH
United States District Judge